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APPENDIX

APPENDIX J – JUNE 1, 1999 LETTER TO THE LITTLE ROCK AREA OFFICE OF THE EEOC — EXHIBIT #21 OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGEMENT

Raymon L. Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301

June 1, 1999

Mr. Kenneth Collins, Supvr.
E.E.O.C.
Little Rock Area Office
425 West Capital, Suite 625
Little Rock, AR. 72201

Mr. Collins,
This letter is in reference to my telephone conversation with you on May 13, 1999 at 3:15 p.m.

I would like to thank you for paging me regarding my Certified Letter #Z 490 626 678 to your office dated May 5, 1999. You explained why your office did not conduct an interview with Nucor-Yamato Steel and or its representives as well as how your office arrived at its decision and its unwillingness to represent me in my claims of discrimination and harassment.

However, after much investigation of my own regarding Title VII of the Civil Rights Act of 1964 and the EEOC Compliance Manual as it relates to Section 8 and Retaliation, my research revealed the following:

Shortly after my employment with Nucor-Yamato Steel, I was

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considered for a post as utility man on the furnaces I was interviewed by the then Melt Shop Manager-Mr. John Bell. Mr. Bell began the interview by telling me that I was being interviewed for the position in primarily to fulfill the minority mandate of the Federal Government. This is stated in the Statement of Fact, Certified Mail #P 280 309 912 in paragraph 1(one) of pages 3 of 3. Article no. 21 of the contents of Nondisclosure information.

In talking to other blacks who worked in the melt shop, they stated that he made the same statement in their interviews.

Mr. Collins, in Sec. 2000e-2 [Section 703] section (a) subsection (2) of Unlawful Employment Practices as it relates to Title VII of the Civil Rights Act of 1964 states:

(a) It shall be an unlawful employment practice for an employer -

> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect status as an employee, because of such individual' race, color, religion, sex, or national origin.

Mr. Collins, I will show how this violation of classification limited my employment with Nucor-Yamato Steel . When I complained about discrimination to management harassment manifested itself in the form of retaliation creating "a hostile work environment" which resulted in the termination of my employment with Nucor-Yamato Steel.

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I applied for two(2) First Helper positions within the melt shop. The first of which I was required to and tested for. I was tested on one of my days off and required to take the test in the conference room of the melt shop offices.

During the testing process, I was interrupted by Mr. John Beaton then melt shop manager as well as an employee with the cleaning services. The door was open to the hall where day to day activities occurred without consideration of my efforts to complete the test.

The successful candidate, Mr. Steve Jackson took the test on a Sunday morning when the offices were empty with little or no supervision. Mr. Jackson is a white employee who I helped train for his position.

At Nucor-Yamato Steel, when the successful candidate is selected for a position, it is the responsibility of the department manager to arrange times when he can sit with the unsuccessful candidates and explain why they did not get the job. After numerous personal requests to Mr. Beaton, he would not grant the interview. It was only when I expressed to other coworkers that the decision was racially biased that Mr. Beaton called me into his office and scolded me for making the statement.

My concern was the test scores and how he arrived at his decision. His response was that there were no right or wrong answers but my test score was very low and he provided no key to the answers that I could use to qualify answers that he was looking for in the test. These inconsistantcies are a violation of Title VII of the Civil Rights Act of 1964, Sec. 2000e-2. [Section 703] of Unlawful Employment Practices,

subsection (L) which states:

> It shall be an unlawful employment practice for a respondent, in connection with the selection of referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

Having been a former educator Mr. Collins, I know that there is an evaluative purpose in the implementation of tests.

The second position of first helper as awarded to Mr. Bill Sadler, who is also white. I was more qualified than he in experience and education.

I applied for a supervisory position as melter within my department in December of 1995. I requested the required Sears Exam- a psychological evaluation required for all management prospects. Candidates who take the examination are evaluated by their supervisor and Mr. DiMicco. My immediate supervisor went over the results with me but I did receive an interview from the department manager nor Mr. DiMicco.

The results of this evaluation were not a concern of management until June 29, 1998. Two and one half (2 ½) years later Mr. Collins when Mr. Mike Gurley utilized it in the form of an "adverse action" days prior to my termination.

After four (4) years of working on the furnaces, I realized that there was no possibility of promotion on the furnaces. This

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feeling was due to the discrimination and harassment that I had experienced.

Harassment on the furnaces manifested itself in actions of my supervisor-melting foreman Mr. Donnie Crum who required me to work on and the furnace deck for excessive periods of time. Exposing me to excessive dangers and the noise of the furnace. One result of which a is severe hearing lost.

Other concerns regarding Mr. Crums behavior are explained in Statements of Facts, Certified Mail # P 280 309 915 and # P 280 309 912. Articles 20 and 21 of the Nondisclosure information. Mr. Crum also referred to a former black employee as "that boy".

At that time, an opening was available in the refractory department. So I applied for the position and was awarded it. This was not a promotion but a lateral move in pay grade and salary.

My first week in my new position, Mr. Glenn Brown-B Crew casting foreman made the statement to my new coworker, Mr. Albert Dyer, that "he heard that I was lazy".

This remark was unjustified in that I left the furnaces with an excellent work record. The harassment by Mr. Brown became so obvious my first week that I called on the radio and asked to meet him after work in the melt shop office.

In this meeting, I explained to Mr. Brown that I knew that he was harassing me. He remarked to my statement by saying " When I come after you you will know it", suggesting to me further intent on his part to harass me to the point of possible

termination.

As indicated in Statement of Fact, Certified Mail # P 280 309 916. Article 19 of the Nondisclosure information paragraph two (2) of page 2, Mr. Brown had a five (5) year pattern of harassment prior to work in the refractory area.

After I had obtained the position in refractory, I learned from my coworker Mr. Dyer that Mr. Brown had developed the reputation in that area as being the supervisor that Nucor-Yamato management would send employees to when they wanted to terminate them.

Mr. Collins **EP-22,202.** Types of unlawful harassment under federal law describe "hostile work environment as:

> A "hostile work environment" harassment claim involves a pervasive atmosphere **(EP-22,214)** of severe **(EP-22, 215)** or unwelcome **(EP-22,217)** working conditions that have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.21 This situation is variously referred to by the courts as a "condition of work,"22 a "discriminatory work environment,"23 "a hostile and offensive atmosphere,"24 or "an intimidating, hostile or offensive working environment."25
>
> Furthermore, a "hostile work environment" claim may be used as part of the proof of another form of job discrimination, such as constructive dis- charge **(EP-22,211).**

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While on the furnaces I began to experience some of the elements contained in the above definition of hostile work environment but they became more prevalent shortly after my transfer to the refractory area by members of management.

Concerns regarding the hostile and offensive atmosphere are indicated in all of the Statements of Facts, Articles 19, 20 and 21 of the Nondisclosure information along with Statement of Fact, Certified Mail # P 280 309 911.

Statements of the fact that relating to my work environment are stated as early as December 1995 in paragraphs two and three of page three of my Sears Evaluation.

The same concerns were expressed in the May 1998 Sears Evaluation of which Nucor-Yamato Steel has refused to provide copies. The request for this information have been made prior to and since my termination.

The work environment as early as March 3, 1998 had become so intimidating that in a meeting with Mr. Jess Garner-refractory supervisor, I asked for help in being able to cope with the situation. I did not receive any advice or information.

In a meeting on May 18, 1998, I communicated the same feelings to Mr. DiMicco-plant manager and he told me to not let Glenn Browns actions affect my work. No assurances that any corrective actions on Mr. Browns part were indicated.

On the evening of April 18, 1998, we were having our daily shift meeting before work when Deborah Devalcour-crane operator expressed safety concerns about operating her crane

during the night of the devastating storm that destroyed Manila, AR. When she asked Mr. Brown why she was required to work under such conditions, he became upset with her. I verbally expressed my agreement with her and he concluded the conversation by saying that he was going to "take this shit anymore". That evening Mr. Brown began a concerted effort to further harass and intimidate me.

Mr. Collins, the following incidents were listed as reasons for my termination:

> 1. I was written-up for insubordination when I refused to meet Mr. Brown after work as explained in the Statement of Fact, Certified Mail # P 280 309 915, Article 20 of the Nondisclosure information.
>
> 2. My work performance suffered as a result of the constant harassment and I was written-upfor that as explained in Statement of Fact, Certified Mail # P 280 309 912, Article 21 of the Nondisclosure information.
>
> 3. Mr. Gurley indicated that refusal to work professionally with other employees.

EP-22,212. When does proof of harassment excuse the claimant's misconduct states:

> Employee work inadequacies may also be justified by having suffered prior harassment and by an employer's inadequate response to harassment. For instance, Title VII is violated where an employee is discharge because of absenteeism and he can show that:

(1) he communicated his fears to the employer and expressed a willingness to cooperate in correcting the situation; and

(2) the employer failed to take appropriate remedial measures.81

A discharge based on an "inability get to along with others" violated Title VII when supervisors were aware of racial disharmony and terminated a black employee rather than investigate it.82 A termination for poor work performance was also illegal when

performance was affected by the physical stress disorders the victim suffered as a result of religious harassment and retaliation by his supervisor, when the employer failed to take corrective action against the supervisor, or to grant the employees request for transfer to another work area.83

Mr. Collins, I verbalized my concerns regarding racism to management. Rather than investigate my concerns, Nucor-Yamato Steel decided that the best way to deal with my concerns would be by terminating me.

Mr. Gurley's statement the "he was not going to have me bad mouthing management" as described in Charge of Discrimination Form lends further support to my claims.

According to Section D. of the EEOC Compliance Manual, 8-II. Elements of a Retaliation Claim titled Adverse Action, Subsection 1. General Types of Adverse Actions states:

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> The most obvious types of retaliation are denial of promotion, refusal to hire, denial of job benefits, demotion, suspension and discharge. Other types of adverse actions include threats, reprimands, negative evaluations, harassment, or other adverse treatment.
>
> Suspending or limiting access to an internal grievance procedure also constitutes an "adverse action."

According to the Nucor-Yamato Steel Company Employees Handbook, Complaint Procedures on page B-28 states the following:

> Any employee having a misunderstanding or complaint concerning work conditions, procedures, policies, or anything relative to work, should follow the method of resolving the problem as set out below:
>
> Step 1. Discuss the matter with your Supervisor. Your Supervisor will attempt to settle the matter. The Supervisor must give the employee an answer or settle the problem satisfactorily within three (3) working days.
>
> Step 2. If answer is not received from the Supervisor within three working days, or if the employee is not satisfied with the answer or settlement, the employee may request a meeting with the Department Manager who will attempt to satisfactorily settle the complaint or problem with five (5) working days.
>
> Step 3. If a satisfactory answer is not received from

the Department Manager within five (5) working days, the employee may submit the complaint, in writing, to the Department Manager who will make a final decision on the matter and advise the employee, in writing, within five (5) working days of receipt to the written complaint.

Step 4. If a satisfactory answer is not received from the General Manager, the employee may submit the matter to the President of the Company. The President shall discuss the problem with the General Manager and together they shall provide an answer as soon as practical.

I exercised the complaint procedure as outlined but was denied an opportunity to have my issues addressed by the President of the Company.

I requested that opportunity in the Statement of Fact, Certified Mail #280 309 912 in the final paragraph of pages 3 of 3 on June 29, 1998.

This was also stated in section six (6) of the Charge Information Form (page 2) which was mailed to your Little Rock Area Office-article no. 18 of the contents of the envelope containing the Nondisclosure information.

Another violation regarding the adverse action clause occurred when I made a request to talk to Dan DiMicco, Plant Manager to Jess Garner, Refractory Supervisor on April 27, 1998.

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I was not afforded the opportunity to discuss the matter with Mr. DiMicco until May 18, 1998 which was twenty-two (22) days after the request. This is in violation of the rules as set forth in Step 3 of the company complaint procedure. Mr. DiMicco did not respond promptly and properly to my request.

I was also subjected to further harassment by Glenn Brown-Casting Supervisor on May 12, 1998 when he requested a meeting with me after work. Due to my concerns regarding Mr. Browns state of mind and the fact that Mr. DiMicco had not responded to my April 27th request, I refused to meet with him after work. I was written up for insubordination by Mr. Brown.

This violation also relates to III. Casual Connection, Subsection B. of the EEOC Charge Processing Outline regarding circumstantial evidence in that the decision-maker was aware of the protected activity before undertaking the adverse action.

This request was made in Statement of Fact, Certified Mail #P 280 309 916 in the final paragraph of pages 2 of 2. Article no. 19 of the contents of Nondisclosure information. The letter was received on April 29, 1998 by Nucor.

After I was written-up for insubordination regarding the above incident, on May 28, 1998, Mr. Brown called me again on the company radio and told me to meet him after work. Mr. Brown raised five (5) issues. Four (4) of the issues raised by Mr. Brown by his own admission were not relevant to my employment with Nucor. I asked him why he we having the meeting and his response was that "Dan-Mr. DiMicco wanted

him to have a meeting with me."

In the meeting, Mr. Brown indicated that he wanted a "more than work relationship" which is discussed in paragraph 5 of Statement of Fact, Certified Mail #P 280 309 911 pages 2 of 2. This is the information that you said you located after my May 5, 1999 letter to your office and it represents another violation the above Casual Connection Clause.

Mr. Collins, there are some inconsistantcies regarding how your office arrived at your decision in such a short period or time.

You indicated some of your colleagues in your office arrived at your decision in a staff meeting. There was no documentation mailed to me in your envelope of information received on May 4, 1999 regarding the staff meeting. Furthermore, in the Dismissal and Notice of Right where the EEOC is closing its file on this charge for the following reason, it indicates:

> The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

Mr. Collins, The World Book Dictionary defines investigation as:

> Investigation, n. a careful search; detailed or careful

> examination. Syn. Investigation, examination, inquiry mean a search for information or truth. Investigation emphasizes a careful and systematic search for facts, especially one carried out by officials: Examination emphasizes a search for facts by inspection: Inquiry especially suggests a search for facts made by asking questions.

Black's Law Dictionary with Pronunciations, Abridged Sixth Edition defines investigate as:

> Investigate. To follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine or inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry. *See also* Discovery; Inspection.

Mr. Collins, the implied meaning and understanding of the word investigation would be a combination of both definitions. Your staff meeting and conclusion regarding my allegations against Nucor-Yamato Steel can hardly be defined as an investigation. So your statement of reason in the dismissal and notice of rights is misleading Mr. Collins.

After having supplied you with documented proof of my claims as it progressed during my employment with Nucor and your office arriving at such an abrupt decision, you would actually have difficulty proving intent on your part to investigate my claims.

I was denied a personal interview by both EEOC offices over this 8 (eight) month period. Mr. Collins, I have a degree in

education and would have been more than capable of talking with you and or your staff and disclosing other information relevant to my claims.

Your office was availed with my phone and pager numbers and the only time that you took advantage of that was Thursday, May 13th. after I expressed concerns in my May 5, 1999 letter to your office.

There appears to have been a rush to judgement on the part of both the Little Rock and Memphis offices with a flagrant disregard of my rights in this case.

I stated on Thursday during our telephone conversation that I felt that the EEOC had "dropped the ball" in this situation. I have suffered finacially and emotionally as a result of the unsubstantiated termination of my employment with Nucor-Yamato Steel. And to have endured the lack of concern that the EEOC, a federal office whose sole responsibility is that of the protection of my civil rights as an employee. This has compounded that humilation.

Mr. Collins, I suspect some irregularities in both the Memphis and Little Rock Area Offices regarding this case. I am at this juncture prepareing to personally confide in legal counsel with regards to this issue.

At this point, I am appealing your March 10, 1999 decision to the United States Attorney Generals Office on the basis possible lack of intent in the investigation of my claims by both offices and due to the fact that your March 10th decision could prejudice any verdict by a jury in my suit.

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I am also requesting the assitance to both the Arkansas and Tennesee State Attorney Generals Offices. While your office is federal, what I suppose as violations occurred in both states.

Mr. Collins, I want to understand why this has happened to me. I did not ask for a favorable ruleing regarding my claims but I did expect the EEOC to conduct an impartial investigation and thereby arrive at a ruleing.

This 8 (eight) month ordeal has only yealded what amounts to a maybe 2 hours of converstion on the part of EEOC.

Respectfully,
s/ Raymon Bledsoe Sr.
Raymon L. Bledsoe Sr.

copies. Arkansas State Attorney Generals Office
Tennesee State Attorney Generals Office
United States Attorney Generals Office
Kay Klugh, Director
Rlb.

Certified Mail #Z 490 626 679

APPENDIX K – JUNE 11, 1999 LETTER FROM LITTLE ROCK AREA DIRECTOR REFERENCING REFUSAL OF RECONSIDERATION AND MISLEADING MR. BLEDSOE REGARDING THE 90 DAYS TO FILE SUIT

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Little Rock Area Office

425 West Capital Avenue, Suite 625
Little Rock, AR 72201
(501) 324-5060
TTY (501) 324-5481
FAX (501) 324-5991

June 11, 1999

Raymon L. Bledsoe, Sr.
710 Johnson Drive
West Memphis, AR 72301

RE: Bledsoe v. Nucor - Yamato Steel Co.

Dear Mr. Bledsoe:

Your request for reconsideration of the dismissal and issuance of the Notice of Right to Sue on the above referenced charge was received in this office on June 3, 1999. I have determined that I will not reconsider the issuance of this Notice of Right to Sue.

The Notice of Right to Sue was issued to you as a result of a decision that further investigation of the charge will not result in a determination that one of the laws enforced by EEOC has been violated. The additional

information you submitted does not change that decision.

Further, your request for reconsideration was received three working days short of the 90 day time period required for you to file suit. The law requires that you file suit in Federal District Court before the 90 days expires. If, as here, you failed to file suit within the 90 day statute of limitation, you lose your ability to proceed on the subject charge. Once a Charging Party loses his right to obtain remedy under one of the laws this Agency administers, EEOC is effectively barred from proceeding on behalf of that individual. Given the above, it would serve no purpose to reopen the charge, and the Agency cannot set aside the Notice of Right to Sue after the 90 days has run. Therefore, I am not able to reconsider or reopen the charge as you request.

Sincerely,
s/ Kay Klugh
Kay Klugh
Area Director

APPENDIX L – JUNE 14, 1999 LETTER TO THE LITTLE ROCK EEOC AREA DIRECTOR CORRECTING MISLEADING 90 DAYS TO FILE SUIT INFORMATION

Raymon L. Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301

June 14, 1999

Kay Klugh, Area Director
E.E.O.C.
Little Rock Area Office
425 West Capital, Suite 625
Little Rock, AR. 72201

Ms. Klugh,

This letter is in response to your letter addressed to me dated June 11, 1999.

You were apparently misinformed regarding the intent of my letter to your office dated June 1, 1999. The research that was submitted to your office and the concerns that I expressed regarding your offices inadequate investigations of my claims against Nucor-Yamato Steel were not meant to be construed as a reconsideration of the dismissal and issuance of the Notice of Right to Sue.

The purpose of that letter as this one is that of my intent to inform both respective Attorney Generals Offices in the states of Tennessee and Arkansas as well as the United States Attorney Generals Office of irregularities within your respective offices.

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I must correct you Ms. Klugh regarding the 90 day period required for me to sue. I have enclosed a copy of the Dismissal Notice of Rights and as you can see, it is dated March 10, 1999. I received the notice by mail on March 12, 1999.

According to my calendars Ms. Klugh, the 90 days required to sue would end on June 10, 1999. You received my letter June 3, 1999 and I filed suit against Nucor-Yamato Steel in United States District Court, Eastern District of Arkansas also on June 3, 1999 which date is well within the required 90 days. So your assumptions as well as your calculations are wrong Ms. Klugh.

Ms. Klugh, I am not a lawyer but this latest act by you as well as the unusual occurances within your offices over the past 8 (eight) months could easily be construed as "obstruction of justice." However, I will leave that determination to the above mentioned Attorney Generals Offices as well as legal remedies that I plan to seek in court.

Your letter along with other documentation related to this situation will be forwarded to the above respective offices.

I have enclosed a copy of my court complaint per the requirements described in Destruction of File of Filing Suit Under Title VII of the Civil Rights Act or the Americans with Disabilities Act.
Thank you for your concern Ms. Klugh.

Respectfully,
s/ Raymon L. Bledsoe Sr.
Raymon L. Bledsoe Sr.

Appendix L

cc. Arkansas State Attorney Generals Office
Tennessee State Attorney Generals Office
United States Attorney Generals Office
Rlb.

Certified Mail # P 280 309 914

APPENDIX M – AUGUST 30, 2000 LETTER TO COUNSEL FOR NUCOR YAMATO STEEL COMPANY REFERENCING INTENT TO COMPEL NUCOR TO COMPLY WITH DISCOVERY.

Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301

August 30, 2000
Via Express Mail

Nicole A. Sargent
Alaniz and Schreader
16010 Barkers Point Lane, Suite 500
Houston, Texas 77079

RE: Civil Action No. J-C-99-220; *Raymon Bledsoe Sr., v. Nucor Yamato Steel Company,;* In the District Court of the Eastern District of Arkansas, Jonesboro Division.

Ms. Sargent:

This letter is in response to your August 25, 2000 letter. As you know I have made numerous requests for the Production of Documents as it relates to Plaintiffs Joint Third Request for Production to Defendant.

You are correct in your assertion that Defendant has produced more than 350 documents but as you know these productions relate only to the personnel file of Plaintiff. However, through 2 requests prior to the third request for production, Plaintiff has requested the production of the personnel files of supervisors of Defendant. Upon each of the three requests **Defendant has objected to and denied the**

production of these documents so you are incorrect in your claims that you have fully complied with Plaintiffs requests. As learned counsel knows, these files are discoverable.

Plaintiff has also requested statistical information regarding the racial make-up of employees of Defendant. Upon each request **Defendant has objected to and denied the production of these documents.** These documents are also discoverable material and Defendant has had 8 (eight) months to prepare this information.

Plaintiff has requested the production of documents as it relates to previous litigation and complaints of discrimination by employees of Defendant which is also discoverable information as it relates to this suit and **Defendant has objected to and denied the production of these documents.**

Defendant has objected to and denied the production of other documents that Plaintiff has requested.

Ms. Sargent, you and I know that the claims in this case do not represent an isolated incident of racial discrimination. Defendant has an established "history" of discrimination not only within the confines of employment but also within the community that Defendant does business in.

Ms. Sargent, the above requested information as you know is crucial to Plaintiff to prepare for trial and is discoverable. These requests as you know will provide a broader foundation for Plaintiffs claims of unfair promotional practices, harassment, patterns and practices of

discrimination. These requests do not represent a search in the dark. This information does exist and Defendant is required to comply with the rules in the production of this information.

As learned counsel for Defendants, you have been aware of the specific issues as is relates to these requests and Defendants failure to produce said requested documents have accomplished nothing and represents **8 (eight) months** of delay for Plaintiff in preparation for this suit. However this is consistent with misrepresentations of information to the court, coercion by co-counsel Mr. Linker with the threat of a psychological evaluation if Plaintiff did not change tort claim against Defendant as well as other deeds that are worthy of sanctions by the court. Any disputes that you might have with the substance of these issues should be left to any response(s) that you might have in objection to the Motion to Compel.

Plaintiff has cooperated with Defendant in responding to 2 (two) sets of interrogatories and requests for admissions and a voluminous 2 (two) day deposition. The information that you relate to in your letter will be forwarded to you if I have possession of it. That is not the issue here.

Ms. Sargent, I have followed the requirements of the rules in requesting production of said documents and narrowly tailoring those requests so that Defendant would know what the specific issues were. Defendants have not cooperated fully and objected to a majority of the requests which Defendants have a right to do. In turn I have indicated to you my intent to compel which is in line with procedure. So your assertion that my notices to you of my intent of filing a Motion to Compel is a threat is wrong and unfounded. I am

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only following the rules of law.

This game of tag has been costly for me in preparing for this trial. I have explained to you the specific issues of Plaintiffs Third Joint Request for Production of Documents to Defendants which will be the basis to Plaintiffs Motion to Compel. As you know, I have made a Fourth Request for Production of Documents to Defendants and time is of the essence. Having fulfilled the "good faith" aspect of the specific issue or issues in dispute as it relates to Local Rule C-7, the subject is now closed for further discussion. I am prepared to file the Motion to Compel.

You have until 12:00 p.m. September 4, 2000 to respond.

Respectfully,
s/ Raymon Bledsoe Sr.
Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, Arkansas 72301
(870)732-0269
Pro Se

APPENDIX N – MOTION TO COMPEL NUCOR YAMATO STEEL COMPANY TO COMPLY WITH DISCOVERY DATED AND FILED SEPTEMBER 11, 2000.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

RAYMON BLEDSOE, SR., Plaintiff/Petitioner

v. Civil Action No. J-C-99-220

NUCOR YAMATO STEEL CO., Defendant/Respondent

MEMORANDUM IN SUPPORT OF PLAINTIFFS MOTION TO COMPEL NUCOR YAMATO STEEL COMPANY TO COMPLY WITH DISCOVERY

Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, Raymon Bledsoe Sr./Plaintiff, respectfully submits this Memorandum in support of his Motion to Compel Nucor Yamato Steel Company/Defendant to comply with the plaintiffs Third Joint Request for Production of Documents and Plaintiff's Fourth Request for Production of Documents to Defendants.

Plaintiff has consulted with counsel for Defendant and has been unable to resolve this matter. However, in the course of the discussions, the parties agreed to raise with the Court the underlying issue of whether or not the Request for Production of Documents are relevant to the scope of the allegations in this case. Accordingly, Plaintiff submits this Memorandum in support of his position that Defendant Nucor Yamato Steel Company, its employees and or its agents due to race, in

violation of Title VII of the Civil Rights Act of 1964, discriminated against him in its employment practices.

I. BACKGROUND

On December 2, 1999, Plaintiff served Defendants with First Request for Production of Documents which was the result of a subpoena that Defendant agreed to treat as First Request for Production. Among these requests for production were 1) personnel files (personnel and melt shop) 2) documents relating to Sadler and Associates, Inc. psychological reports conducted by Dr. Sears 3) documentation related to and surrounding fire and shut down of NYS II caster on or about August to September of 1998 and 4) Reports regarding racial make-up of employees.

On or about December 29, 1999, Defendant served its objections and refused to produce the requested documents on various grounds including overly broad, confidentiality and relevance. However, Defendant submitted documents from Plaintiffs personnel file with the exception of Plaintiffs resume and other documents relative to Plaintiffs personnel file.

On December 22, 1999, Plaintiff served Defendant with Plaintiff Raymon Bledsoe Sr. Second Request for Production of Documents requested documents relative to personnel files and Sears examinations of employees of Defendant and fire at NYS II castor. On January 12, 2000, Defendant submitted objections of overly broad, inadmissibility and vague.

On January 10, 2000, Plaintiff made Second Request

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for Production of Plaintiff which included tape recordings and items missing from Plaintiffs personnel file. Defendants responded with objections to requests stating attorney client privilege, overly broad and admissibility. However, Defendant did serve Plaintiff with some of the missing items from Plaintiffs First Request for Production of Documents such as requested test results.

February 22, 2000, Plaintiff served Defendant with Plaintiffs Joint Third Request for Production of Documents to Defendant. Among the requests for production were specific and narrowly tailored requests for personnel files and Sears reports of employees of Defendant and lawsuits related to racial discrimination by Defendant. Defendant responded on March 23, 2000 with the usual objections of overly broad, attorney client privilege, etc., *see Attached Exhibit No. 1.*

Plaintiff communicated need for production with Defendant in June and August letters to Defendants explaining that documents are crucial to trial preparation, *see attached Exhibit No. 2.* Counsel's for Defendant excuse was knowing the specific issues of Plaintiffs requests. If Plaintiff was any more specific would require work product of Plaintiff.

Plaintiff served Defendant with Fourth Request for Production on August 30, 2000, *see attached Exhibit No. 3.* On September 1, 2000 counsel for Defendant stated in letter that Plaintiff's Fourth Request is untimely and therefore objected to. Fourth request reference documents that are also crucial to trial preparation.

Plaintiff has cooperated with Defendant in responding

to 2 (two) sets of interrogatories , requests for admission and a 2 (two) day deposition. Therefore, Plaintiff requests that Motion to Compel be granted.

II. ARGUMENTS AND AUTHORITIES

A. PRODUCTION REQUESTS SEEK RELEVANT AND ADMISSIBLE INFORMATION

The bulk of objections are based upon relevancy. As the Court is aware, that this is a difficult objection upon which to prevail during the discovery phase of an action. The spirit of Rule 26 (a) of the Fed. R. Civ. Proc. is that discovery be self-effectuating, without need to resort to the court, and that its scope be liberal, extending to all matters reasonably calculated to lead to admissible evidence. This standard is well ensconced, and generally known and understood by civil practitioners, *Hickman v. Taylor*, 329 U.S. 495, 67 S. Ct. 385, 91 L Ed. 451 (1947); *Greyhound Lines, Inc. v. Miller*, 402 F. 2d. 134 (8th Cir. 1968); *Carlson Companies Inc. v. Sperry and Hutchinson Co.*, 374 F. Supp. 1080, 1100 (D. Minn. 1974); *Laker Airways Ltd. v. Pan American World Airways*, 103 F.R.D. 22 (D.C. Cir 1984); *National Organization for Women, Inc. (NOW), St. Paul Chapter v. Minnesota Min. & Mfg. Co.*, 73 F.R.D. 467 (D.C. Minn. 1977); *Schlegenhauf v. Holder*, 379 U.S. 104, 114-15, 85 S. Ct 234, 241, 13 L. ED. 2d 152 (1964).

In an employment discrimination action, Plaintiff must be given access in discovery to information that will assist him or her in establishing existence of alleged discrimination, *Runyan v. Sybase, Inc.*, No. 93-0368, 1993 WL 377062 (E.D. Pa. 1993); *Flanagan v. Travelers Insurance Co.*, 111 F.R.D. 42, 45 (W.D.N.Y. 1986).

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In *Rolescreen Company v. Pella Products of St. Louis, Incorporated.*, 145 F.R.D. 92, the court ruled that requests have been reasonably calculated to lead to discovery of admissible evidence which has been interpreted as meaning "any possibility that the information sought be relevant to the subject matter of the action" *citing Morse/Diesel, Inc. v. Fidelity and Deposit Co.*, 122 F.R.D. 447,449 (S.D. N.Y. 1988); *Mallinckrodt Chemical Works v. Goldman, Sachs & Co.*, 58 F.R.D. 348 (S.D. N.Y. 1973)

In *Dykes v. Morris*, 85 F.R.D. 373 (D.C. Ill. 1980) the courts determined that the concept of relevancy is to be broadly construed at the discovery stage of an action and discovery rules are to be afforded liberal treatment as it relates to Fed. R. Civ. Proc. 26 (b)(1), 33 (a), 37 (a)(2), 28 U.S.C.A.

Our system of civil litigation cannot function if parties in violation of court orders, suppress information called for in discovery; mutual knowledge of all relevant facts gathered by both parties is essential to proper litigation, *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (C.A. Ga. 1978)

In *Runyan v. Sybase, Inc. and Clark v. Melton Bank*, N.A., No 92-4823, 1993 WL 170950 (E.D. Pa. 1993) the courts ruled that the scope of employment discrimination actions must go beyond specifics to Plaintiffs claim.

In Request for Prod. No. 32, Plaintiff requested statistical data relative to racial make-up of Defendants employees to which Defendants objected. However, the courts ruled in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 804-05, 93 S. Ct. 1817, 1825; 26, 36 L. Ed. 2d 668 (1975); *Hollander*

v. American Cyanamid Co., 895 F. 2d 80, 84 (2d Cir 1990) that for purposes of discovery in employment discrimination actions, statistical data is relevant to establishing employees pattern of conduct and may facilitate determination as to whether employer has discriminated against particular individual as well as entire class.

In *Kramer v. Boeing Company.*, 126 F.R.D. 690 (D. Minn., 1989) the court ruled that one objecting to discovery on the grounds of relevancy carries the burden to sustain the objection, *citing, Dellums v. Powell*, 642 F. 2d. 1351, 1364 (D.C. Cir. 1980);*Gulf Oil Corp. v. Schlesinger*, 475 F. 913, 916–17 (E.D. Pa. 1979); *Wallace v. General Electric Co.*, 1988 W.L. 31069 (E.D. Pa. 1988); *Martin v. Lamb*, 122 F.R.D. 143, 147 (W.D. N.Y. 1988); *Robinson v. McGovern*, 83 F.R.D. 79, 85 (E.D. Pa. 1979); *In re Folding Carton Antitrust Litigation*, 83 F.R.D. 251, 254 (N.D. Ill. 1978)

Defendant also objects to various requests for production basing objections on inadmissibility. As the Court knows, Rule 26(b) clearly states that inadmissibility is no grounds for objection to discovery, *Oppeheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 98 S. Ct. 2380, 57 L. Ed. 2d. 253 (1978); *Culligan v. Yamaha Motor Corp.*, U.S.A., 110 F.R.D. 122 (S.D. N.Y. 1986).

Defendant' objections of irrelevant and inadmissibility are without merit and Defendant should be compelled to produce documents relative to document requests.

B. CONFIDENTIAL AND PROPRIETARY INFORMATION DISCOVERABLE

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Defendant objects to request for production regarding personnel files and Sears examination report results of employees Defendant who participated in discriminatory action against Plaintiff, citing confidentiality and proprietary information as basis for objections. These file are discoverable.

Personnel file of employees supervisor, who also signed Plaintiffs performance review was discoverable by document request in age and sex discrimination action, as information in personnel file might be relevant and was reasonably calculated to lead to discovery and admissible evidence in *Lyoch v. Anheuser-Bush Companies,* 164 F.R.D. 62 74 Fair Empl .Prac. Cas. (BNA) 691, 69 Empl. Prac. Dec. P 44, 518 (E.D. Mo. 1995).

In *Kramer v. Boeing Company,* 126 F.R.D. 690 (D. Minn., 1989) the courts stated that in product liability action against airplane manufacturers, manufacturer was not entitled to refuse discovery as to certain documents on the basis that documents were confidential but, rather, proper method to protect confidentiality was through protective order, *Lyoch v. Anheuser-Bush Companies,* 164 F.R.D. 62.

However, Defendant has not requested a protective order regarding requests for production as it relates to their objections on the grounds of confidential and or proprietary information. On the contrary, Defendant submitted blanket evidentiary exclusions which can be especially damaging, *Estes v. Dick Smith Ford, Inc.,* 856 F. 2d. 1097, 57 USLW 2195, 47 Fair Empl. Prac. Cas. (BNA) 1472, 47 Empl. Prac. Dec. P 38, 323, 26 Fed. R. Evid. Serv. 943 (8th Cir. (Mo.), 1988.

In the discovery process, individuals are often forced

by the courts to disclose the kind of personal information deserving privacy protection under these decisions. An individuals constitutional privacy interests can thus be implicated by the discovery process to the same extent that it can be indicated by other disclosure requirements, *United States v. Hubbard*, 650 F. 2d. 293 (D.C. Cir. 1980).

Ordinarily, information which is of a confidential or proprietary nature is not, for that reason alone, outside the parameters of civil discovery, *Deitchman v. E. R. Squibb and Sons, Inc.*, 740 F. 2d. 556 (7th Cir. 1984); *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation*, 101 F.R.D. 34 (C. D. Cal. 1984); *Gantron Cooperation v. H. C. Johnson Agencies, Inc.*, 79 F.R.D. 415, 418 (E. D. Wisc. 1978).

In *Johnson Foils, Inc. v. Hyck Corp.*, 61 F.R.D. 405 (N. D. N. Y. 1973) the courts ruled that it should be a rare case in which even highly sensitive business confidences, relevant to a civil law suit, should be entirely unavailable through discovery.

Plaintiff is clearly entitled to requests for production as it relates to Defendants objections to confidential and proprietary information. Defendant's objections are without merit and should be compelled to produce relevant document requests.

C. RULE 26 PROVIDES FOR BROAD DISCOVERY

While trial court is vested with reasonable discretion in determining whether discovery is to be allowed, discovery rule should be given a broad, liberal interpretation, *Edgar v. Finley*, 312 F. 2d. 533 (8th Cir. (Mo.)(1963).

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Under Rule 26(b)(1), " parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action." As a general matter, relevance or discovery purposes is broadly construed and " information sought need not be admissible at the trial if information sought appears reasonably calculated to lead to the discovery of admissible evidence."

The Supreme Court ruled in *Hickman v. Taylor,* 329 U.S. 495, 507 (1947) that it is no longer open to debate that the discovery rules should be given a broad liberal interpretation. No longer can the time-honored cry of fishing expedition serve to preclude a party from inquiring into the facts underlying his opponents case. In *Madden v. Turner Broadcasting Systems, Inc.,* 1998 WL 458188, at *2 (3d. Cir 1998) and *Katz v. Batavia Marine & Sporting Supplies, Inc.* 984 F. 2d 422, 424 (Fed. Cir. 1993) the courts ruled that it is the premise of modern litigation that the Federal Rules contemplate liberal discovery, in the interest of just and complete resolution of disputes.

In Title VII cases, broad discovery rules are applicable to pre-certification discovery, *National Organization for Women v. Sperry Rand,* 88 F.R.D. 272, 277 (D. Conn. 1980). *Burns v. Thiokol Chemical Corp.* [6 EPD P 8737; 483 *F. 2d* 300, 305 (5th Cir. 1973) and *Milner v. National School of Health Technology,* 73 F.R.D. 628, 632 (E.D. Pa 1972) state that rules of discovery are to be liberally interpreted and that Title VII cases scope of discovery is particularly broad.

The Court of Appeals for the Eighth Circuit has stated that Title VII "is to be accorded a liberal construction in order to carry out the purpose of Congress to eliminate the

inconvenience, unfairness and humiliation of racial discrimination", *Parham v. Southwestern Bell.*, [3 EPD P 8021; 433 F. 2d. 421, 425 (8th Cir. 1970).

D. ADMISSIBILITY OF ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT

Patterns and practices of discrimination is claim filed by Plaintiff against Defendant in this litigation. Defendant objects to requests for production no.(s) 26, 27 and 31 basing their objections upon attorney-client and attorney work product privilege. Information within the documents would support Plaintiffs claim of pattern and practices for discrimination.

In *Chaffin v. Rheem Mfg. Co.*, 904 F. 2d 1269, 1271 (8th Cir. 1990) the court ruled that when a complainant challenges an on going pattern of discrimination rather than on isolated instance, the alleged violation may be deemed "continuing".

A majority of the documents in requests no.(s) 26 and 31 are now apart of public record. In *Arkansas National Bank v. Cleburne County Bank*, 525 S.W. 2d 82, 84-85 (Ark. 1975) the court concluded that an attorney may be required to produce papers belonging to his client where the knowledge to their existence is accessible to others or the public, or if the client may be compelled to produce them.

In Defendant's opposition, it is not known whether the requested documents came to counsel since the beginning of litigation in this case or whether counsel has possession of documents at all. *Citing, Arkansas National Bank v. Cleburne County Bank*, the court ruled that "the mere fact that the

documents or knowledge of the documents came to the attorney while acting for the client is not sufficient to invoke the attorney client privilege".

Defendant does not state the status of litigation as it relates to the requested documents. The work product rule does not come into play merely because there is a remote prospect of future litigation citing Fed. R. Civ. P 26(b)(3), 28 U.S.C.A.

Ordinary work product immunity is a qualified one, that is capable of being overcome by a proper showing of justification on the part of the person seeking discovery, *Peterson v. Douglas County Bank and Trust Co.*, 967 F.2d 1186, 1189 (8th Cir. 1992).

In *Resolution Trust Corp. v. Dabney*, 73 F. 3d 262, 266 (10th Cir. 1995) the court concluded that "because the work product doctrine is intended only to guard against the divulging of attorneys strategies and legal impressions, it does not protect facts concerning the creation of work product or facts contained within the work product". Plaintiff may not rely on Rule 26(b)(3) or claims of work product as a basis for refusing to respond to discovery requests seeking the disclosure of non-privileged facts, *Phillips Electronics North America Corp., v. Universal Electronics, Inc.* 892 F. Supp. 108, 110 (D. Del. 1995).

The Supreme Court ruled in *Hickman v. Taylor*, 329 U.S. 495, 67 S. Ct. 385 that "where relevant an non-privileged facts remain hidden in an attorneys files and where production of those facts is essential to the preparation of ones case, discovery may be properly had. Such written statements

and documents might, under certain circumstances be admissible in evidence or give clues to the existence or location of relevant facts".

Defendant's objections based upon attorney-client and attorney work product are without merit. Defendant should be compelled to produce relative documents.

E. REQUEST FOR A 15 DAY CONTINUANCE FOR DISCOVERY

Plaintiff has been "hamstrung" in his ability to examine discoverable information and data on account of improperly imposed objections by Defendant as it relates to Plaintiffs Joint Third Request for Production of Documents to Defendant. In addition, Defendant has paid only very loose attention to its obligation to produce full, informative and truthful responses to the discovery requests of Plaintiff. This approach has detracted substantially from the orderly progression of this litigation and contrary to the spirit of both rules and precedent governing the pretrial phase of litigation.

Defendant's delays in improperly responding to Plaintiffs Third Joint Request for Production has created a backlog for Plaintiffs Fourth Request for Production of documents. Defendant received Plaintiffs Fourth Request on August 30, 2000 but stated untimeliness as their only objection to respond in their September 5, 2000 letter to Plaintiff. The discovery cut-off date is September 14, 2000. However, Defendant had 15 days to respond to Plaintiffs Fourth Request but has refused to do so. A majority of the requests for production relate to discovery that Defendant has accumulated during the course of the past 8 (eight) months,

would not be burdensome and easily accessible.

Defendant should ordered to answer both Third Joint Requests for Production and Fourth Request for Production of Documents to Defendant by October 1, 2000. The answers to the discovery are crucial to Plaintiff's preparation for trial.

III. CONCLUSION

WHEREFORE, Plaintiff Raymon Bledsoe Sr. requests that Motion to Compel be granted and for all other proper relief.

s/ Raymon Bledsoe Sr.
Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, Arkansas 72301
(870)732-0269
Pro Se

CERTIFICATE OF SERVICE

I, Raymon Bledsoe Sr., certify that I mailed a copy of the foregoing Motion to Compel to Nicole Sargent, 16010 Barkers Point Lane, Suite 500, Houston, Texas 77079 on this 11th day of September, 2000.

s/ Raymon Bledsoe Sr.
Raymon Bledsoe Sr.

CERTIFIED MAIL #7099 3400 0004 9590 2667

APPENDIX O – BRIEF IN OPPOSITION TO DEFENDANTS MOTION FOR FINAL SUMMARY JUDGEMENT DATED AND FILED ON SEPTEMBER 29, 2000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

RAYMON BLEDSOE SR., Plaintiff

v. Civil Action No. J-C-99-220

NUCOR YAMATO STEEL CO. Defendant

BRIEF IN OPPOSITION TO DEFENDANTS MOTION FOR FINAL SUMMARY JUDGEMENT

Throughout this litigation Defendant, Nucor Yamato Steel Company has maintained a state of denial as it relates to its discriminatory practices against Plaintiff, Raymon Bledsoe Sr. Defendant has tried to twist and even disregard the significance of complaints expressed by Plaintiff in certified letters mailed to Defendant prior to termination, the last of which requested the exercise of the final step of the Company Complaint Procedure of Defendant. Defendant violated its own company policy by terminating Plaintiff without allowing him to exercise that right.

Defendant also denies the significance of psychological evaluations in 1995 and 1998 of Plaintiff by Dr. Sears, company psychologist, which document the fact Plaintiff expressed concerns regarding employment practices of Defendant.

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Defendant would like for this Court to overlook its actions for discrimination as it relates to Title VII of the Civil Rights Act of 1964 and pretend that it never occurred. However, this is a matter of law where relevant facts speak to the issues of this case therefore Defendants Motion for Final Summary Judgement should be denied.

I.
FACTUAL BACKGROUND

Defendant has verbally painted an illustrious portrait of the "most efficient steel mill in the world". Upon Plaintiff's employment with Defendant in June, 1992, Nucor Yamato Steel Company was not the 2 million plus ton operation that it was at Plaintiff's termination on June of 1998. Its annual production rate was closer to 1 million plus tons per year.

Much has been said to discredit Plaintiff's character and contributions during his six year of employment with Defendant. However, the facts indicate that Plaintiff brought a lot to the table as it relates to work experience and education upon employment with Defendant.

Prior to employment with Defendant, Plaintiff had obtained an extensive work history as it relates to production related facilities and construction. Plaintiff owned and operated his own road construction company with an average of 5 immediate employees and as many as 35 subcontractors as a contractor for the Arkansas Highway and Transportation Department. [1]

Other management experience includes customer service representative for a medical orthopedic company

where Plaintiff developed a complete personnel policy. The same owners of KMI changed the name to Onyx where Plaintiff was rehired as assistant plant manager.[2]

During the deposition, counsel for Defendant asked Plaintiff if he was "proud of his education"? Being the first child in his family to graduate from a major college, [3] the answer was yes. With a degree in education, Plaintiff has taught within the public school system as well as adult education for at local college. Plaintiff also has extensive vocational technical training.

During those 1 million ton plus years, Plaintiff met the challenge on the furnaces in setting two records for the 12 hour period. The first record was set as Plaintiff worked with a different first helper and melting supervisor. The second record was with first helper Jamie Cook and melting supervisor Donnie Crum. While on the furnaces, Plaintiff designed a work product that could have saved Defendant as estimated $200, 000.00 per year.

After lateral transfer to refractory, Plaintiff volunteered his previous experience as a quality control manager to become an internal auditor for Defendant's quality control program on some of his days off from work. The long and short of it is that Defendant prospered greatly form Plaintiff's 6 years of employment.

After complaints regarding what Plaintiff perceived as racial harassment. Plaintiff requested an opportunity to exercise the final step of Defendant's complaint procedure when Defendant terminated his employment. Summary Judgement should be denied.

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I
ARGUMENTS AND AUTHORITIES

A. Summary Judgement Request of Nucor Yamato Steel Should Be Dismissed

Defendant's request for summary judgement is this cause should be dismissed. In *Windsor v. Bethesda General Hospital,* 523 F. 2d 891, the Court of Appeals dismissed and vacated employers motion to dismiss stating "in civil rights actions, pleadings are to be liberally construed citing *Coby v. Union Electric,* 518 F. 2d. 978, 979 (8th Cir. 1975); *Cruz v. Cardwell,* 486 F. 2d. 550, 551-552 (8th Cir. 1973); *Escalera v. New York City Housing Authority,* 425 F. 2d 853, 857 (2nd Cir.) cert. denied 400 U.S. 853, 91 S. Ct. 54, 27 L. Ed. 2d 91 (1970); *Holmes v. New York City Housing Authority,* 398 F. 2d 262, 265 (2nd Cir. 1968); *Barnes v. Merritt,* 376 F. 2d 8, 11 (5th Cir. 1967).
Windsor also states that "only when the plaintiff could not state of facts which could entitle him to relief is a district court warranted in granting a motion to dismiss" citing *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S. Ct. 99 2L. Ed. 2d 80 (1957); *Lewis v. Chrysler Motors Corp.,* 456 F. 2d 605, 607 (8th Cir. 1972); *Springfield Television, Inc., v. City of Springfield,* 428 F. 2d 1375, 1381 (8th Cir. 1970); *Great Atlantic and Pacific Tea Co. v. Amalgamated Meatcutters and Butcher Workmen, Local No. 88,* 410 F. 2d 650, 652 (8th Cir. 1969).

The U. S. Court of Appeals for the Eight Circuit in *Robert Johnson Grain Co. v. Chemical Interchange Company,* 541 F. 2d 207 citing *Windsor* noted that summary judgement is an extreme remedy, and one which is not to be granted unless the movant has established his right to a judgement with such clarity as to leave no room for controversy and that the other

party is not entitled to recover under any discernible circumstances. In passing upon a motion for summary judgement the Court is required to view the facts in the light most favorable to the party opposing the motion and give the the party the benefit of reasonable inferences to be drawn form underlying facts. *Adickes v. U. S. H. Kress Co.* 398 U. S. 144, 153-59, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970), *United States v. Diebold, Inc.*, 369 U. S. 654, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962); *Percival v. General Motors Corp.*, 539 F. 2d 1126 (8th Cir. No. 75-1879 July 21, 1976).

In *Green v. Servicemaster Company*, 66 F. Supp. 2d 1003 (8th Cir. 1999) the court stated that because this is an employment discrimination case, it is well remembered that the Eighth Circuit Court of Appeals has cautioned that "summary judgement should seldom be used in employment-discrimination cases, *Crawford v. Runyon*, 37 F. 3d 1338, 1341 (8th Cir. 1994) citing *Johnson v. Minnesota Historical Soc'y*, 931 F. 2d 1239, 1244 (8th Cir. 1991); *Hilebrand v. M-Tron Indus.*, 827 F. 2d 363, 364 (8th Cir. 1987) cert. denied 488 U. S. 1004, 109 S. Ct. 782, 102 L. Ed. 2d 774 (1989); See also *Snow v. Ridgeview Medical Ctr.*, 128 F. 3d 1201, 1205 (8th Cir. 1997) citing *Crawford; Helfter v. United Parcel Serv. Inc.*, 115 F. 3d 613, 615 (8th Cir 1997) (quoting Crawford); *Chock v. Northwest Airlines, Inc.*, 113 F. 3d 861, 862 (8th Cir. 1997). We must keep in mind that our Court has previously cautioned, that summary judgement should be used sparingly in employment discrimination cases, citing *Crawford); Smith v. St. Louis University*, 109 F. 3d 1261, 1264 (8th Cir. 1997) (quoting *Crawford*) *Hardin v. Hussmann Corp.*, 45 F. 3d 262 (8th Cir. 1995) ("Summary judgement should be used sparingly in employment discrimination cases", citing *Haglof v. Northwest Rehabilitation, Inc.* 910 F. 2d. 492, 495 (8th Cir. 1990); *Hillebrand,*

827 F. 2d at364) .

The Court, in *Green*, 66 F Supp. 2d 1003, concluded that summary judgement is appropriate in employment discrimination cases only in "those rare instances where there is no dispute of fact and where there exists only one conclusion", *Johnson*, 931 F. 2d at 1244; See also *Webb V. St Louis Post-Dispatch*, 51 F. 3d 147, 148 (8th Cir. 1995) (quoting *Johnson*, 931 F. 2d at 1244); *Crawford*, 37 f. 3d at 1341 quoting *Johnson*, 931 F. 2d at 1244. "To put it another way, because discrimination cases often depend on inferences rather than a direct evidence, summary judgement should not be granted unless the evidence could not support any reasonable inference for nonmovant". Evidence will support reasonable inference therefore summary judgement request of Defendant should be dismissed.

In applying the standards as outlined in Rule 56(a)-(c), the trial judges function at the summary judgement stage of the proceedings is not to weigh the evidence and determine the truth of the matter, but to determine whether there are genuine issues for trial, *Quick v. Donaldson Co.*, 90 F. 3d 1372, 1376-77 (8th Cir. 1996); *Johnson v. Evron Corp.*, 906 F. 2d 1234, 1237 (8th Cir. 1990). Summary Judgement should not be granted.

B. Plaintiff's Title VII Claims of Discrimination and Retaliation Are Not Barred By the Statute of Limitations Due to Administrative Delays of the E.E.O.C.

Plaintiff fulfilled his responsibilities in corresponding and providing the EEOC with information relevant to

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Plaintiff's claims of discrimination by Defendant. There were delays in the administrative process and evidence will show that the administrative actions of the EEOC are not confined to the 180 days limitation ascribed in 706(f)(1) of Title VII, 42 U.S.C. s2000e-5(f) and that such delays were out of Plaintiff's hands of control.

According to 706(f)(1) of Title VII, an administrative charge must be filed with the EEOC within 180 days of the alleged discriminatory incident. In order to be valid, Title VII requires that "charges shall be in writing under oath of affirmation and shall contain such information and be in such form as the EEOC requires." 42 U.S.C. 2000-5(b). Once the charge is filed, the EEOC has the responsibility of investigating the allegations of the charging party. If the Commission (EEOC) determines that an allegation warrants their intervention they will proceed with conciliation measures with the employer or represent the charging parry in suit against respondent. However, the Commission might determine that there is insufficient evidence that would warrant the intervention of the EEOC and at charging parties request issue a Charge of Discrimination to respondent pursuant to Notice of Right to Sue Letter to charging party.

A brief time line of events shows that Plaintiff corresponded with the EEOC on several occasions prior to the propose December 29, 1998 of Defendant.

Date	**Event**
July 2, 1998	Plaintiff is terminated by Defendant Nucor Yamato Steel Co.[4]

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August 6, 1998	Plaintiff contacts the EEOC via telephone. The Little Rock Office of the EEOC sends charge information form to Plaintiff with notice title "You May File A Charge".[5]
August 24, 1998	Plaintiff completes the charge information form and returns it to the Little Rock EEOC Office.
September 8, 1998	The Memphis Office sends Bledsoe indicating that they had received Plaintiffs information regarding a matter with **Piggy Wiggly** not Defendant Nucor Yamato Steel. The letter states that they wanted to discuss the matter in more detail.[6]
September 15, 1998	Plaintiff speaks to Christine Wilson of the Memphis Office via telephone for approximately 10 minutes when Ms. Wilson determined that based upon the information provided that the EEOC would not represent Plaintiff and any legal proceedings against respondent and the 180 statute of limitations.
October 27, 1998	Plaintiff sends letter to Little Rock Office of the EEOC outlining events to that date. Plaintiff expresses dissatisfaction with interview with Ms. Wilson of the Memphis Office. Plaintiff

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also states that *"Since my conversation with Ms. Wilson, I have not received any documentation from your office or her Memphis Office regarding your findings and or my rights to seek relief with an attorney of my hiring and the time frame in which I have to litigate this case. It is my hopes that your office would review the information submitted to you and render a decision."* [7]

December 29, 1998	Expiration of 180 days to file charge.
January 29, 1999	Plaintiff sends letter to Little Rock EEOC requesting information referencing acceptance or denial of claims again stressing the element of time to litigate the action.[8]
February 5, 1999	EEOC finally responds to Plaintiff's request by submitting Form 5, Charge of Discrimination. **Charge form delayed due to mailing of letter to Blythville instead of Plaintiffs West Memphis address.**[9]
March 4, 1999	Plaintiff sends letter to Little Rock EEOC Office referencing the delay to the wrong address.[10]
March 8, 1999	Plaintiff files charge of Discrimination.[11]

It is clear in the language of the October 27, 1998 letter

that Plaintiff is requesting EEOC finding and or his rights to seek relief with an attorney. In essence, the EEOC is asked to render a decision whether or not it will represent Plaintiff as a result of findings or granting of Charge of Discrimination and Right to Sue Letter so that Plaintiff could litigate the matter privately. This letter was written approx. 115 days after termination of Plaintiff which is well within the 180 day statute to file a charge. However, the EEOC did not respond to Plaintiff regarding his requests.

It is also clear that the EEOC understood the essence of the October 27th letter in that a copy of the October 27th letter was included with the letter to the Little Rock Office dated January 29, 1999 Both letters requested the same documentation. This request prompted a response from the EEOC which led to the March 8, 1999 filing of the charge.

According to calculations of Plaintiff, if the Little Rock Office of the EEOC had responded to the October 27th letter within the same time frame of 40 days as it relates to the January 29th letter, the Charge of Discrimination would have been filed on or about December 7th which would have been well in advance of the December 29th expiration period.

It is clear that administrative delays occurred prior to the March 8, 1999 filing of Charge of Discrimination filed against Defendant and Plaintiff cannot and should not be expected to represent the EEOC as it relates to reasons and or justification of delays. However, Plaintiff can lend some legal support to Congresses intent for the establishment of the 180 statute of limitations.

In *Hazel v. McDonnell Douglas Corp.*, 517 F. 2d 1301 (8th

Cir. 1975) addresses the issue of promptness of the EEOC in that it states that the use of this language as promptly as possible and, so far as practicable demonstrates that Congress did not set specific administrative deadlines. Given the Congressional emphasis on conciliation, "we cannot conclude that Congress intended a 180 day cut off period for Commission enforcement actions when Congress explicitly noted that determinations on reasonable cause alone might take more than 120 days. We believe that the language of the statute and its legislative history support the conclusion that administrative enforcement of Title VII does not cease at the end of 180 days and thus, the 180 day provision does not serve as a deadline for the Commission to issue any notice to the complaining party".

All four Court of Appeals have examined and adhere to *Hazel* in their conclusion that 706(f)(1) is not a time bar to EEOC enforcement. *See Equal Employment Opportunity Commission v. E. I. duPont de Nemours and Co.*, 516 F. 2d 1297 at 1298 (3rd Cir.1975); *Equal Employment Opportunity Commission v. Kimberly-Clark Corp.*, 511 F. 2d 1352, 1356-1357 (6th Cir. 1975); *Equal Employment Opportunity Commission v. Louisville & Nashville R. Co.*, 505 F. 2d 610, 612 (5th Cir. 1974); *Equal Employment Opportunity Commission v. Cleveland Mills Co.*, 502 F. 2d 153, 159 (4th Cir. 1974).

In *Equal Employment Opportunity Commission v. Rexall Drug Company et al.* 1974 WL 320 (8th Cir. 1974), the Courts ruled that the purpose of the 180 day period is merely "to define the time a private party must defer to the Commissions attempts to settle the dispute through conciliation ". Since March of 1972 the EEOC has been allowed to bring civil suits where the investigation of charges filed with the Commission

leads it to believe that discrimination practices have been committed. Public Law 92-261, 86 Stat. 103 (March 24, 1972) Congress realized, however that the Commissions workload might in some instances result in an extensive delay between filing of charges with the EEOC and institution of civil proceedings, and determined that *after the 180 day period* the party who filed charges could bring a private action in order to "escape from administrative quagmire which occasionally surrounds a case caught in an overloaded administrative process".

In the October 27th letter, Plaintiff expressed his dissatisfaction with the interview with Ms. Wilson of the Memphis Office. In the last sentence of the letter, Plaintiff asks the Little Rock Office of the EEOC *"that your office would review the information submitted to you and render a decision"*. It was Plaintiff's impression that during the lapse between the October 27th letter and the January 29th letter that the Little Rock Office had reconsidered the information and was therefore conducting an investigation. However, even if the Little Rock Office had decided not to reconsider Plaintiff's complaint, it was under the administrative duty to respond to Plaintiff's October 27th letter.

While the Little Rock Office of the EEOC did not respond promptly and properly to Plaintiffs requests in his October 27, 1998 letter, according to the wording of *EEOC v. Rexall,* Plaintiff was well within his rights in his second request in his letter to the Little Rock Office dated January 29, 1999 to file after the 180 day period.

It is clear that the Little Rock Office of the EEOC maintained a file regarding Plaintiff's case within that office.

It is also clear that in no communications with the Little Rock Office did it indicate that Plaintiff had missed the 180 day filing date. Instead the Little Rock Office responded to the January 29, 1999 request by issuing a Charge of Discrimination on March 8, 1999.

As this Court can clearly see, the EEOC has been afforded much latitude by Congress and the Courts of Appeals in its administrative actions. It is also clear that Plaintiff exhausted all administrative means prior to and after the 180 day filing period to bring this case to trial.

Plaintiff exercised diligence and therefore cannot be held responsible for the administrative delays of the EEOC. Delays which could not be controlled by Plaintiff.

Plaintiff relies on the theory of Equitable Tolling which is appropriate only when the circumstances that cause a Plaintiff to miss a filing deadline are out of his hands. *See Zipps v. Transworld Airlines, Inc.* 455 U. S. 385, 393, 102 S. Ct. 1127, 1132-33, 71 L. Ed. 2d 234 (8th Cir. 1982) and *Hill v. John Chezik Imports,* 829 2d. 112, 1124 (8th Cir. 1989) Equitable tolling arises upon some positive misconduct by the party against to whom it is asserted, *DeBrunner v. Midway Equpt. Co.,* 803, F. 2d 950, 952 (8th Cir. 1986). *Melendez v. Singer-Fiden,* 529 F. 2d 321, 323-324 (10th Cir. 1976), equitable tolling is warranted where matters, beyond plaintiff's control are at work such as administrative delay or dereliction.

The timely filing of a charge with the EEOC is subject to waiver, estoppel and equitable tolling, *Walker v. St. Anthonys Medical Center,* 881, F. 2d 554, 556-557 (8th Cir. 1989).

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Plaintiff's filing period should be tolled and logic dictates that he maintain all claims referred to Plaintiff's First Amended Complaint and Plaintiff's Second Amended Complaint which is pending before this Court. Summary Judgement should not be granted.

B. Evidence That Plaintiff was Subject to Racial Harassment While Employed at Nucor Yamato Steel Company.

To prove the Plaintiff was subjected to a hostile work environment in violation of Title VII, Plaintiff must prove (1) he belongs to a protected group, (2) he was subject to unwelcome harassment, (3) the harassment was based on race, (4) the harassment affected a term, condition of privilege of employment and (5) employer liability-meaning that employer knew or should have known of harassment and failed to take proper remedial action. 42 U. S. C. A. 2000e.

Plaintiff was racially harassed by supervisors Donnie Crum while he worked on the furnaces and by Glenn Brown after Plaintiff's lateral move from the furnaces of Nucor Yamato Steel to the refractory department. Defendants introduced a disciplinary write up by Donnie Crum labeled as Defendants Exhibit "B", an incident which occurred on July 19, 1994.

On or about July 26, 1992,[13] Plaintiff was promoted from truck driver to utility man on the furnaces. During the interview for the position, John Bell then melt shop manager, referred to Plaintiff's reason for consideration was due to fulfillment of quota.[14] Plaintiff was promoted to second helper on or about September 5, 1992.[15] Plaintiff was

assigned to furnace no. 1 where Jamie Cook was first helper. Plaintiff was trained and working in position of second helper for a period of approx. 22 months, almost 2 years without any incident and or documentation of work performance.

Employment records of Donnie Crum which Defendant refuses to produce per production requests of Plaintiff will show that Donnie Crum was promoted from first helper to melter shortly after Plaintiff was promoted to utility man.

During the period that surrounds the July 26th incident, Nucor Yamato Steel had established a goal of 2 million tons per year production and production records for that period will demonstrate that C crew, the furnace crew which Donnie Crum supervised, was not making production. It was even more telling that Donnie Crum was inadequate in his supervisory role when during this period John Bell-melt shop manager, came to the furnaces and reprimanded Donnie Crum stating that he (Donnie Crum) was not a 2 million ton melter.

In a conversation with Calvin Brandenburg, first helper for furnace # 2 for C crew, Plaintiff and Brandenburg who is white were discussing Donnie Crum when he warned Plaintiff of the fact that Crum was a racist.[16] Plaintiffs' feelings that Crum was a racist was supported even more when he heard Crum refer to a former black employee as "that boy".

During the incident, no. 1 furnace was experiencing production difficulties. Plaintiff was on the back of the furnace trying to turn it around when a frustrated Jamie

Cook, and two other co-workers came to the back of the furnace and began to blame Plaintiff for problems which were out of Plaintiff's control. Jamie Cook left the furnace platform and was on the furnace deck (a lower level) when Plaintiff threw buckets onto furnace platform after Plaintiff had completed task of sanding tap hole. Jamie Cook ran from furnace deck and up to the furnace platform making suggestions of wanting to fight Plaintiff when Plaintiff out of feelings of frustration and racial harassment made remark to Jamie Cook to get off the sump (back of furnace).

Crum also required that Plaintiff work on furnace deck for excessive period of time where he was exposed radiant heat in excess of 2800 degrees Fahrenheit.[17]

Personal notes record by Plaintiff indicate that on May 11, 1996 that the tap hole on furnace wash through 3 times and Donnie Crum was on the not paying attention to what was going on during one of the wash throughs.[18] Plaintiff called for maintenance which was Crums responsibility.

On May12, 1996, Jimmy Adams a white second helper for furnace no. 2 was insubordinate when Crum told him to leave Vulcan Gun on deck and he removed it anyway and further violated a safety issue in that he was working without a heat shield.[19] Donnie Crum did not write him up.

On May 12, 1996, Plaintiff talked to Cook about Crum turning furnace around slowly.[20] Crum also had a history of sleeping on the job and one occasion, a first helper from another crew threw an object breaking the window in the

tapping pulpit where Donnie Crum worked in order to awaken him.

On page 3 of Defendants brief in motion for summary judgement, Defendant allude to warning related to "serious arguments and physical force" as it relates to July 17, 1996 incident where Plaintiff was suspended for 1 day.[21] Donnie Crums inadequacies and racial bias surface again.

Personal notes recorded by Plaintiff on July 17, 1996[22] state that Dennis Foster who is white and was utility man for no. 1 furnace instructed the crane operator to remove a broken electrode from the furnace before Plaintiff could safely climb out of the way endangering the life and safety of Plaintiff. Immediately after the incident occurred, Plaintiff talked to first helper Jamie Cook and then talked to supervisor Crum about Fosters actions. Crum delegated his responsibility as supervisor in telling Plaintiff to talk to Foster. Under Crums instruction regarding the safety violation, Plaintiff went back to work area and talked to Foster. During the conversation Foster called Plaintiff "an ignorant mother-fucker. Provoked by Foster and nervous from the safety violation, Plaintiff pushed Foster. Crum then called for a meeting after which included Foster but he did attend. Foster was insubordinate. To add further insult to injury Plaintiff was suspended for 1 day and Foster was not suspended. The actions of Donnie Crum were perceived by Plaintiff as racial harassment and discriminatory in nature. Defendant has also refused the production of personnel files of Foster[23]

The actions Jimmy Adams and Dennis Foster support *Mitchel v. Toledo Hosp.*, 946 F. 2d 577, 583 (6th Cir. 1992) (explaining

that comparable individuals must (1) have dealt with the same supervisor; (2) have been subject to the same standards; and (3) have engaged in the same conduct without such differentiating or mitigating circumstances which would distinguish their conduct or the employers treatment of them for it).

While on the furnaces, Plaintiff experienced racial harassment from John Beaton-melt shop manager when Plaintiff complained of racial bias in the testing process.[24]

Due to the harassment of Donnie Crum and Defendant's refusal to promote Plaintiff, Plaintiff requested lateral move to refractory after which Donnie Crum was assigned as supervisor for the castor. These concerns were expressed to then plant manager Dan DiMicco. At the castor, Crum continued to not take responsibility as supervisor in inspecting tundish and plates before casting steel in them.[25] When he realized that Plaintiff was responsible for building the tundish he continued to do what he had done for years and that was harass Plaintiff.

Upon Plaintiffs lateral move to refractory, B crew castor supervisor Glenn Wayne Brown told Albert Dyer, Plaintiff's coworker in refractory, that he heard that Plaintiff was lazy. Browns statement to Dyer in essence set the stage for the continuance of the hostile work environment that Plaintiff was trying to leave from the furnaces.

Glenn Wayne Brown continued the harassment in Plaintiff's first week under the disguise of requiring Plaintiff to locate items for the castor that Plaintiff was not familiar with. Plaintiff recognized that Brown was racially harassing

him when he called Brown on the company radio and asked him to meet with Plaintiff after work. Brown agreed.

In the meeting Plaintiff addressed the issue of harassment with Brown. Brown responded not by denying the harassment but by confirming it by stating "when I (Brown) come after you, you will know it".[26] Plaintiff from that point worked in a constant state of fear. On the evening of April 18, 1998, B crew was having its daily shift meeting before the work when Deborah Devalcour-crane operator express safety concerns.[27] Plaintiff agreed with Devalcour concerns and Brown became upset and stated that " he (Brown) was not going to take this shit anymore". Devalcour is a white female. That evening Glenn Wayne Brown began a concerted effort to further racially harass Plaintiff. Prior to that evening, Brown seldom came to Plaintiffs work area but on that evening Brown saw Plaintiff sleeping in a chair in his work station and the next evening Brown saw Plaintiff sleeping again and Plaintiff was written up for both incidents. Plaintiff does not contest the write up although Jess Garner, plaintiffs immediate supervisor, told Plaintiff and at least 3 other refractory employees that is was permitted and even recommended that employees take a "power nap" on night turns. Plaintiff had saw Brown sleeping in his chair on a night turn.[28]

On May 18, 1998 plaintiff talked to plant manager-Dan DiMicco about Browns harassment and DiMicco told Plaintiff not to let Glenn Browns actions affect his (Plaintiff's) work.[29] Plaintiff was not reassured instead Brown further harassed Plaintiff by calling him on the company radio on May 28, 1998[30] and requesting a meeting with him where he raised 5 issues , 4 of which by his own admission were not

relevant.[31]

In *Stafford v. State of Missouri,* 835 F. Supp. 1136 (8th Cir. 1993) the Court states that an employer will be subject to liability under Title VII if (1) the harasser is the employer or one of the employers supervisors who is determined to be agent of the employer or (2) the employer knew or should have known of harassment caused by a co-worker, but failed to take corrective action. Citing *Kauffmen v. Allied Signal, Inc.,* 970 F. 2d 178, 182-183 (6th Cir. 1992); *Sparks v. Pilot Freight Carriers, Inc.,* 830 F. 2d 1554, 1558-1559 (11th Cir. 1987); *Turner v. Barr,* 811 F. Supp. 1,2-3 (D. D. C. 1993) *Cronin v. United Service Stations, Inc.,* 809 F. Supp. 922, 928 (M. D. Ala. 1992)

Defendant knew or should have known through the certified letters from Plaintiff of harassment and failed to take prompt remedial action reasonably calculated to stop the harassment. Citing *Baily v. Runyan,* 167 F. 3d 466, 468 (8th Cir. 1999); *Davis v. Tri State Mack Distribs., Inc.,* 981 F. 2d 340 343 (8th Cir. 1992).

This steady barrage of racial harassment began to affect what one could describe prior to that as a wholesome and productive work and after work relationship of church and even participation in a basketball tournament with coworker Dyer. Mike Gruley contributed to an already hostile work environment by telling coworker Dyer "I don't care if he (Plaintiff) is fucking your wife, you are going to get along with each other".

The Sears Evaluations of 1995 and 1998 are consistent is that company psychologist Dr. Sears states that "he (Plaintiff) has felt aggrieved.[32] *Hocevar v. Purdue Frederick*

Company, 2000 WL 116228 (8th Cir. 2000) cites *Harrris v. Forklift Systems, Inc.,* 510, U. S. 17, 21, 114 S Ct. 367, 126, L. Ed. 2d 295 (1993) (recognizing that Title VII bars discriminating conduct that affects that affects a reasonable persons psychological well being); *Knopp V. Samaritan Health Sys. Inc.,* 13 F. 3d 264, 269 (8th Cir. 1993) (psychological harm is relevant factor in hostile work environment analysis).

In *Cherry v. Menard, Inc.,* 101 F. Supp. 2d. 1160 (8th Cir. 2000) the Court states that "a discriminatory abusive work environment may exist where harassment caused economic injury, affected the employees psychological well being detracted from job performance, discouraged and employee from remaining on a job, or kept the employee from advancing in his or her career. But even conduct that does not affect employees psychological well being, can and often will distract from employees job performance, discourage employee from remaining on the job, or keep them from advancing in their careers, *Smith v. St. Louis University,* 109 F. 3d 1261, 1265, (8th Cir. 1997) quoting *Harris,* 510 U. S. 17, 22, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993);

While the words racial harassment does not appear in certified letter to Defendant, the word harassment does which is Defendant's argument. The Courts question at this point is what would a jury draw from this inference to racial harassment after consideration of other relevant facts.

It is Plaintiff's contention that racial harassment is the inference drawn from melt shop managers hurried suspending and eventual termination of Plaintiff.

The Supreme Court directs that "the objective

severity of harassment should be judged from the perspective of a reasonable person in the plaintiffs position, considering all circumstances". *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U. S. 75, 81, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998) quoting *Herns v. Forklift Sys., Inc.*, 510 U. S. 17, 23, 114 S. Ct. 367, 126 L. Ed. 295 (1993).

It is clear that summary judgement as it relates to harassment should not be granted.

C. Evidence to Support Prima Facie Case to Race Discrimination In Plaintiffs Disciplinary Actions and Termination and Evidence of Pretext.

It is clear from the evidence presented in section B. Evidence That Plaintiff was Subject to Racial Harassment While Employed at Nucor Yamato Steel Company that the disciplinary actions and termination of Plaintiff were discriminatory in nature.

In order to establish a prima facie case of discrimination it must be established that (1) the plaintiff is a member of a protected class (2) an adverse employment action was taken against plaintiff, and (3) circumstances existed that raise an inference of unlawful discrimination. *Johnson v. Legal Services of Ark.*, 813 F. 2d 893, 896 (8th Cir. 1987), citing, *Texas Dept of Community Affairs v. Burdine*, 450 U. S. 248, 253, (1981).

According to Section D, of the EEOC Compliance Manual, 8-II. Elements of a Retaliation Claim titled Adverse Action, Subsection 1. General Types of Adverse Action,[33] Defendant has satisfied 6 of the most obvious types of

adverse actions as it relates to disciplinary actions and termination of Plaintiff. They include; suspension, discharge, threats, reprimands, harassment, and suspending or limiting access to an internal grievance procedure.

A brief time line will clarify many of the irregularities as it relates to arguments presented by Defendants. The time line will also demonstrate steps 2 and 3 in the establishment of prima facie case of discrimination. Defendant has produced one relative to events after termination, however this time line will reference events prior to termination.

Plaintiff transferred to the refractory department in 1996. During the first week Glenn Wayne Browns racial harassment begins. When Plaintiff expressed concerns about the harassment with Brown he did not deny it but confirmed it by making the statement to Plaintiff in the meeting that "when I come after you, you will know it". Browns threat represented an adverse action.

DATE	EVENT
March 3, 1998	Due to the intimidating work environment created by Brown's racial harassment, Plaintiff requested meeting with refractory supervisor-Jess Garner concern the stress that Plaintiff was experiencing. In the meeting Plaintiff requested help in order to cope with the intimidation but Garner offered none.
April 18, 1998	During a daily shift meeting a white female crane operator expressed concerns Brown

about working in the crane during the storm that devastated Manila, Ark. and Plaintiff agreed with her. In response Brown stated "I'm not going to take this shit anymore" and walk out of meeting.[34]

April 18, 1998 — Plaintiff is written-up for sleeping in his chair. Possible adverse action.

April 27, 1998 — Plaintiff requests meeting with Garner, co-worker Dyer and Garner. The meeting was in reference to the difficulties that Dyer and Plaintiff experienced in working with Brown. It was revealed in the meeting by Dyer that Brown had a five year history of harassment.[35]

April 27, 1998 — Plaintiff mailed letter to Garner referencing the meeting and requesting meeting with plant manager DiMicco.[36]

May 4, 1998 — Evaluated by Dr. Sears for what Plaintiff thought was the result of his expression in the possible replacement of supervisor Jess Garner who in conversation days earlier had expressed interest in a job at a proposed facility in Oregon. Plaintiff requested the supervisor-employee with Garner to discuss the results of the test but Garner refused to go over the test with Plaintiff and after making numerous request to Garner prior to termination, Plaintiff did not receive that results until

months after termination. [37]

In the evaluation, Dr. Sears references the fact that "he (Plaintiff) is expending energy nursing grievances".[38] The evaluation is referenced by Mike Gurley on June 29, 1998 when he states that it almost exactly like the 1995 Sears Evaluation.

May 12, 1998 Browns yells over the company radio, which accesses the entire melt shop, to Albert Dyer "come up and see what a cocked nozzle will do for us". Plaintiff expressed the fact that the tundish was not one that Dyer and Plaintiff prepare for the caster but the inference in his yelling was that Dyer and Plaintiff were responsible for it. Brown become unglued and demanded that Plaintiff leave his work station. [39]

At 5:00 that afternoon, Brown called Plaintiff over the radio and asked for meeting after work. Plaintiff agreed initially but after giving thought to the fact that Garner nor Dan DiMicco had not responded to certified letter requesting meeting concerning the intimidation from Brown and considering the anger that Brown had exhibited earlier that day, Plaintiff asked Brown if it meeting was related to the incident related to the nozzle that occurred earlier that day and Browns response was "no". Plaintiff declined the

meeting expressing the fact that there was nothing outside of work that he wanted to talk about.

May 12, 1998 Brown wrote-up Plaintiff for work performance, conduct and insubordination. All of which represent adverse actions-harassment in that Plaintiff did not build the tundish that had the problem, there were no other instances where Plaintffs work performance was at issue that day, Plaintiff left Browns work area at his demand and the meeting that he requested over the radio by his own admission was not in reference to work.[40]

May 13, 1998 Plaintiff written-up by Donnie Crum for placement of the wrong plates in a tundish. Racial harassment and lack of response from plant manager regarding problem with Brown begins to take its toll on Plaintiffs work performance. However, Crum was negligent in not inspecting tundish before they flew into it which was a requirement.[41]

May 18, 1998 DiMicco responds to Plaintiffs April 27th request 22 days later. The Company Complaint Procedure[42] states that 5 day response time from date of written complaint. This represents an adverse action-limiting

access to an internal grievance procedure and violates Step 3 of Defendants company complaint procedure.

May 28, 1998 Brown called Plaintiff on company radio at 5:30 p.m. and requested meeting after work. Reluctantly Plaintiff accepted but requested John McCauly-melter to also be present, McCauley agreed The meeting started with Brown stating that Plaintiff's attitude was bad, that Plaintiff disrespected him on the radio and asked why Plaintiff hated him. None of Browns remarks could be justified. Plaintiff maintained minimum contact with Brown. He proceeded to state 5 issues that he felt Plaintiff should correct.[43] By Browns own admission, only 1 issue was relevant to Plaintiff and it was a minor issue. This represented an adverse action-harassment and reprimand from previous write-up of insubordination.

June 15, 1998 Plaintiff mailed certified letter to Jess Garner regarding the insubordination write-up by Brown and the factors behind the installation reused plates as it related to the write-up by Crum. Plaintiff expressed concerns regarding lingering work issues with Brown.[44]

June 26, 1998 Plaintiff suspended by melt shop manager-Mike Gurley based upon a comment by Albert Dyer to Jess Garner. Plaintiff is reprimanded again for previous write-ups.

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This represent an adverse action.[45]

June 29, 1998 Plaintiff returned to work from suspension. Gurley came out to Plaintiff's work area and talked to Plaintiff. He had in his possession page 3 of Plaintiff's 1995 Sears Evaluation and emphasized areas that he could use to justify his actions. He stated that Plaintiff's 1998 evaluation was "exactly the same almost.[46]

June 29, 1998 Plaintiff mailed Gurley certified letter regarding suspension, issues regarding negligence in the administration of company policy and requested that Plaintiff be allowed to exercise the final step of Defendants complaint procedure as it relates to Step 4.[47]

July 2, 1998 Plaintiff was terminated without having exercised the final step of Defendant's complaint procedure. The represented another adverse action.[48]

One of Defendants claims about Plaintiff is his supposed inability to get along with coworkers. As this Court can clearly see, Plaintiff made every effort possible working within the guidelines of Defendant's company complaint procedure. Adverse actions can be seen throughout the time line provided above. *Anderson v. Methodist Evangelical Hospital,* (1971) WD Ky) 1971 WL 150, 4 BNA. FEP Cas 33, 3 states that "a discharge based upon an inability to get along with others" violated Title VII when supervisors were aware

of racial disharmony and terminated a black employee rather than investigate it.

The circumstances stated in the above time line existed and raise more than an inference of unlawful discrimination. Therefore Defendant's request for summary judgement should be denied.

D. Prima Facie Case of Retaliation

A prima facie case of retaliation has been established by Plaintiff in that he (1) engaged in a statutorily protected activity; (2) the he suffered an abusive employment action; (3) casual connection existed between the adverse employment action and the protected activity. *Eva v. Kansas City, Mo. School Dist.*, 65 F. 3d 98, 100 (8th Cir. 1995) cert. denied 517 U. S. 1104, 116 S. Ct. 1319, 134 L. Ed. 2d 472 (1996) An employer may not discriminate against an employee because the employee "has opposed any practice made unlawful employment practice, 42 U. S. C. A. 2000e-3(a).

Plaintiff was subjected to harassment through a series of retaliation and adverse actions for complaining of unfair promotional practices. Issues regarding the promotion process were raised with plant manager-Dan DiMicco and melt shop manager-John Beaton in 1996.[49] Plaintiff was retaliated against for those complaints in three ways: (1) he was scolded by John Beaton;[50](2) he was suspended one day for allegedly fighting with a co-worker;[51] and Beaton failed to act on Plaintiff's complaint about a plant security guard and Beaton asked him what he did to the guard.[52]These acts were discussed by Plaintiff in his

deposition. Defendants allege that these events are barred by the statute of limitations relying on the theory of the 180 day filing period which should be tolled by this Court.

It is evident and Plaintiff has shown that a reasonable inference of racial harassment can be drawn from harassment described in certified letters to Defendant and events which form the basis of those letters.[53] Those certified letters constitute protected activity under Title VII of Plaintiff as it relates to racial harassment by Glenn Wayne Brown,[54] retaliation for writing the letters by Mike Gurley[55] and the adverse action of Mike Gurley by terminating Plaintiff's employment.[56] In *Reginelli v. Martin Industries, Inc.* 987 F. Supp. 1137 (8th Cir. 1997) the Court ruled that the Title VII prohibition against retaliation, "is not confined to situations in which the parties are engaged in formal proceedings, but rather to extend to forbid discrimination against applicants or employees for attempting to protest or correct allegedly discriminating conditions of employment. *Hern v. R. R. Donnellery & Son Co.*, 460 F. Supp. 546, 548 (N. D. II. 1978) quoting *McDonnel Douglas Corp. v. Green*, 411 U. S. 792, 796, 93 S. Ct. 1817, 1821, 36 L. Ed. 2d 668 (1973). This is consistent with the underlying purpose of Title VII to resolve employment discrimination disputes short of formal litigation where possible. Informal action taken to protest unlawful treatment is surely protected "opposition" activity, so long as it is not so unreasonably disruptive as to lose the protection of Title VII.

Plaintiff reasonably believed that he was reporting racial discrimination when he was retaliated against the write-ups, suspensions and eventual termination of employment with Defendant by Mike Gurley.

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Hargens v. United States Department of Agriculture, 865 F. Supp. 1314 (8th Cir. 1994) states; to establish the activity as protected under Title VII, a plaintiff need not prove the merits of the underlying discrimination complaint, but only that he was acting under a good faith reasonable belief that a violation existed. Citing *Sumner v. United States Postal Service,* 899 F. 2d 203, 209 (2nd Cir 1990); *Wilson v. U T Health Center,* 973 F. 2d 1263, 1267 (5th Cir. 1992) (good faith, reasonable charges of violation protected even if charges ultimately shown to be unfounded .*DeAnda v. St. Joseph Hosp.,* 671 F. 2d 850, 853 n. 2 (5th Cir. 1982) and *Berg v. LaCroose Cooler Co.,* 612 F. 2d 1041, 1045-46 (7th Cir. 1980).

The Eighth Circuit Court of Appeals has used an alternative formulation of the prima facie showing in retaliation cases that specifically requires a showing that the employer had knowledge of the employees protected activity and a showing of temporal proximity of the discharge to the protected activity to establish a casual connection. This formulation requires a showing that (1) the employee engaged in a protected activity (2) the defendant was aware of the plaintiffs engagement in the protected activity (3) the plaintiff was subsequently discharged and (4), that the discharge followed the protected activity so closely in time as to justify an inference of retaliatory motive. Plaintiff has established all of the criteria expressed in this formulation satisfying the final element with the mailing of certified letter dated June 29, 1998 followed by termination of Plaintiff on July 2, 1998. Summary Judgement should not be granted.

E. Prima Facie Case for Tort of Outrage Claim

Plaintiff's claim tort of outrage is not preempted by

the Arkansas Workers Compensation Act. An important aspect of the tort of outrage claim is that of emotional distress. It is clear from other claims stated in this Opposition for Summary Judgement that Plaintiff suffered for a greater portion of his employment with Defendant from racial harassment which resulted in anxiety and stress that should not have been part of his job requirement with Defendant. *Crenshaw v. Georgia Pacific Corp.*, 915 F. Supp. 93 (1995), the Court ruled; factors that bear an determination of whether conduct is extreme and outrageous include: the conduct at issue; the period of time over which the conduct took place; the relation between plaintiff and defendant, and defendants knowledge that plaintiff is peculiarity susceptible to emotional distress be reason of some physical or mental peculiarity.

Psychological evaluations of Plaintiff for the years of 1995 and 1998 demonstrate that Plaintiff felt "aggrieved" as it related his employment with Defendant. The injury to Plaintiff's shoulder is not the only issue but the racial harassment which created a hostile environment where Plaintiff was subjected to radiant heat temperatures well in excess of 2800 degrees Fahrenheit on the furnaces for excessive periods of time by Donnie Crum and temperatures in excess of 1200 degrees Fahrenheit in refractory department as Plaintiff was required to change plates out by Glenn Wayne Brown-castor supervisor.

Exposure to such high degrees of radiant heat has reduced Plaintiff's tolerance to ambient heat which is not only crucial to Plaintiff's health as it relates to heat exhaustion but is also critical to Plaintiff's current occupation which requires outside work. The fact that employer

continues unjustifiable conduct over long periods of time can be important factor weighing in favor of finding that employer conduct toward employee was outrageous, *Smith v. American Greeting,* 804 S. W. 2d 683 (1991). Defendant's suggestion that tort of out rage claim only amounts to a shoulder injury and that it is only a workers comp. claim in totally in error. In *Gourley v. Crossett Public Schools,* 968 S. W. 2d 56 (1998) the Court stated that we have noted several times that an employer who willfully and intentionally injures an employee is not immune from a common-law tort action. *See Hill v. Patterson,* 313 Ark. 322, 855 S. W. 2d 297 (1993); *Thomas v. Valmac Indust., Inc.,* 306 Ark 228, 812 S.W. 2d 673 (1991); citing *Heskett v. Fisher Laundry & Cleaners Co.,* 217 Ark 350, 230 S. W. 2d 28 (1950). Accordingly Summary Judgement should not be granted.

F. Defamation Claim is Not Time Barred and the Remainder are Not Privileged

Defamation claims of Plaintiff's First Amended Complaint and Plaintiff's Second Amended Complaint which is before this Court are not time barred and the remainder are not privileged. Plaintiff's claims of defamation in his First Amended Complaint arise from employee write ups, and supervisor comments. However, claims of defamation in his Second Amended Complaint not only relate to claims of the First Amended Complaint but also to Defendants accusations during Plaintiff's deposition of drug sale, use and arrest not only of Plaintiff but also Plaintiff's children. An exhibit was offered into evidence that Defendant obtained from the Internet.

The truth of the matter is that Defendant has been

reckless with speech to Plaintiff and about Plaintiff during the 6 years of employment to Defendant. For example, shortly after Plaintiff was employed with Defendant, Plaintiff asked Donnie Crum if he would care to meet Plaintiff's wife and family who waited for him in Plaintiff's car in the melt shop parking lot. Crum agreed to meet Plaintiff's family. Plaintiff introduced Crum to family and Crum proceeded to look and Plaintiff's children and suggest that one of them did not look like Plaintiff. Plaintiff was insulted, Plaintiff's wife was insulted and Plaintiff could not began to understand stand the inference that he children may have drawn from Crums remarks.

Another example of Defendant's malice conversation is the conversation that Mike Gurley had with Jess Garner and Albert Dyer where Garner and Dyer were discussing Plaintiff's working relationship with Dyer when Gurley intrudes and states "I don't care if Raymon is fucking your wife, you are going to get along"

Defendant would like for Court to think that these remarks are privileged, time barred and just a mere figure of speech. However, both statements taken in context are malicious, injurious and defamatory and not protected by privilege. Judge J, Hays of the Arkansas Supreme Court ruled in *Dillard Department Stores v. Felton*, 634 S. W. 2d 135 (Ark. 1982) and citing *Arkansas Associated Telephone Company v. Blankenship*, 211 Ark. 645, 201 S. W. 2d 1019, (1947) "we, approved the following language: The protection of the privilege may be lost by the manner of its exercise, although the belief in the truth of the charge exists. The privilege does not protect any unnecessary defamation. In order for a communication to be privileged, the party making it must be

sure to go no farther than his interest or his duties require. Where the party exceeds his privilege and the communication complained of goes beyond what the occasion demands that he should publish, and is unnecessarily defamatory of plaintiff, he will not be protected, and the fact that a duty, a common interest, or a confidential relation existed to limited degree is not a defense, even though he acted in good "faith" (At p. 651, 201 S. W. 2d 1019).

It is clear that the above conversations of Crum and Gurley meet the above criteria for denial of privilege by this Court. It appears to be a pattern of Defendants. Pattern and practices of harassment is a claim in both amended complaints. *Jenkins v. Wal-Mart Stores, Inc.*, 910 F. Supp. 1399 (8th Cir. 1995) state that a plaintiff making a claim of discrimination may challenge incidents which happened outside the statutory time limitations of Title VII if the various incidents or acts of discrimination constitute a continuing pattern of discrimination. *Ashley v. Boyle's Famous Corned Beef Co.*, 66 F. 3d 164, 167-68 (8th Cir. 1995) citing *Hukkanen v. Internat'l Union of Operating Eng'rs.*, 3 F. 3d. 281, 285 (8th Cir. 1993); *West v. Philadelpha Elec. Co.*, 45 F. 3d 794, 754 (3d Cir. 1995) A continuing violation can be drawn if a specific incident occurred beyond the 180 day period if incident is part of an on going pattern of discrimination. *Chaffin v. Rheem Mfg. Co.*, 904, F. 2d 1269, 1271 (8th Cir. 1990); *Satz v. ITT Fin Corp.*, 619 F. 2d 738, 743 (8th Cir. 1980); *Smith v. Office of Economic Opportunity*, 538 F. 2d 226, 228-29 (8th Cir. 1976). Therefore the statutory limitations are challenged regarding the defamation claim and summary judgement should not be granted.

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III

CONCLUSION AND REQUEST FOR RELIEF

Plaintiff would remind the Court that essential requests for production have been denied by Defendant. Such requests are not only essential to Plaintiff in order for him to successfully plead this case but said request have been a lost element in Plaintiffs Opposition to Summary Judgement of Defendants. In *Stanback v. Best Diversified Products, Inc.*, 180 F. 3d 903 (8th Cir. 1999) the Court state " although discovery does not have to be completed before Court can grant summary judgement, summary judgement is proper only after nonmovant has had adequate time to engage in discovery. Federal Rules of Civil Procedure 56, 26 U. S. C. A.

WHEREFORE PREMISES CONSIDERED, Raymon Bledsoe Sr., respectfully requests that this Court deny Motion for Final Summary Judgement and grant Plaintiff's claims for violations of Title VII without prejudice as there are genuine issues of material fact warranting a trial before a jury.

CERTIFICATE OF SERVICE

This is to certify that true and correct copies of Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgement were served upon Defendant by certified mail, return receipt requested, on this 29th day of September 2000, as follows:

Appendix O

Nicole Sargent
Alaniz and Schreader
16010 Barkers Point Lane, Suite 500
Houston, Texas 77079

APPENDIX P – NUCOR YAMATO STEEL'S ORIGINAL ANSWER TO RAYMON BLEDSOE'S FIRST AMENDED COMPLAINT.

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

RAYMON BLEDSOE, SR.,	§	
Plaintiff,	§	
vs.	§	CIVIL ACTION NO.
	§	J - C- 99 - 220
NUCOR-YAMATO	§	
STEEL COMPANY	§	
Defendant.	§	

DEFENDANT NUCOR YAMATO STEEL COMPANY'S ORIGINAL ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT

TO: Mr. Raymon Bledsoe, Sr., pro se, 710 Johnson Drive, West Memphis, Arkansas 72301.

Nucor-Yamato Steel Company (hereinafter "Nucor" or "Defendant"), Defendant in the above-entitled and numbered cause, files this Original Answer to Plaintiff's First Amended Complaint and in support of which would show as follows:

II.
AFFIRMATIVE DEFENSES

31. Defendant would affirmatively show that Plaintiff is not entitled to any relief for his claims as the EEOC failed to comply with its statutory duty to investigate and attempt to

resolve the allegations in accordance with Title VII of the Civil Rights Act of 1964, as amended.

Respectfully submitted,
By: s/ [illegible]

John K. Linker
State Bar No. 00785313
Joseph L. Wood, III
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ATTORNEYS FOR DEFENDANT,
NUCOR-YAMATO STEEL COMPANY

Certificate of Service

This to certify that true and correct copies of Defendant Nucor Yamato Steel Company's Original Answer to Plaintiff's First Amended Complaint were served upon Plaintiff by certified mail, return receipt requested, and to the Court by Federal Express on this 17th day of December, 1999, as follows:

Raymon Bledsoe, Sr., pro se
710 Johnson Drive
West Memphis, AK 72301

s/ [illegible]
John K. Linker